Supreme Court, U.S.
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No. 03-1278

IN THE
Supreme Court of the United States

RAYMOND CHARLES PERSIK,
Petitioner

v.

COLORADO STATE UNIVERSITY,
Respondent

On Petition For Writ of Certiorari
To The U.S. Court of Appeals for the 10th Circuit

PETITION FOR REHEARING

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QUESTIONS FOR THE US SUPREME COURT ON REHEARING

1. "Agency policy can be developed either by the adoption of general rules or through case-by-case adjudication, *The Judicial Role in Defining Procedural Requirements for Agency Rulemaking*, 87 Harvard Law Review 782 (1974); as an additional protection, against either a claim based either on retaliation, or potential collateral objectives of third parties involved in a mixed motive discriminatory action, can this Court toll the 300-day statutory limitation, imposed to file a valid charge with the EEOC, if a questionnaire has already been submitted prior to the "plaintiff's" absence from the jurisdiction of the federal circuit in which the action of the EEOC is pending, in the event any questionable event, criminal or civil, prevents the "plaintiff" from attending a meeting with the EEOC to file a timely charge of discrimination?

2. Again, using *Judicial role*, *supra*, can this Court adopt a uniform standard for the Federal Equal Employment Opportunity Commission (EEOC) to operate under in the United States of America, by adopting the filing of the Intake Questionnaire, if a subsequent charge is filed, as fulfilling the 300 day filing deadline, as at least two U.S. circuit courts have done?

3. Can this Court now consider the EEOC's alleged violations of their own policy in dismissing the charge on February 16, 2001, coupled with new information clearly demonstrating the EEOC filed the charge on the 300th day following the last date of alleged discrimination in the questionnaire, and the 294th day following the last day, upon amendment, and can this Court remand this action so that the Denver EEOC can supply reasons for their alleged failure to turn the case over to the U.S. Attorney General, *SEC v.*

Chenery Corp., 318 US 80 (1943) (agency violation of their own policy); in addition, does this further the petitioner's desire to invoke equitable estoppel?

4. Does the argument, pertaining to question 3 above, further the petitioner's claim for equitable estoppel pertaining to his admitted failure to serve both CSU, and the Colorado attorney general, based on his allegation that the CSU legal clerk, and possibly CSU's attorney Lawrence Pendleton, stated that CSU was not the correct body to receive service of process, by clearly "demonstrating that both this offense and the 'other crimes' show the 'modus operandi,' 'handiwork,' or 'signature' of the defendant", 29 Am Jur 2d § 423 Evidence, To show identity or modus operandi?

5. Once again, the Petitioner asks this Court to review the constitutionality of *Roe v. Wade*, 410 US 113 (1973); since church and state are separate in the USA, is alleged religious discrimination, based on the petitioner's religious based pro life view, the one area where we consider God's love in making a decision to add a sixth class of protected "persons" to the five existing classes currently covered by Title VII?

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ARGUMENT

Part I. Tolling of 300-day statutory limitation due to an unforeseen extension of absence by a "plaintiff" with a pre-arranged meeting to file a charge, against a known respondent, with the district office of the EEOC maintaining jurisdiction over the claim

1. "Agency policy can be developed either by the adoption of general rules or through case-by-case adjudication, *The Judicial Role in Defining Procedural Requirements for Agency Rulemaking*, 87 Harvard Law Review 782 (1974); as an additional protection, against either a claim based either on retaliation, or potential collateral objectives of third parties involved in a mixed motive discriminatory action, can this Court toll the 300-day statutory limitation, imposed to file a valid charge with the EEOC, if a questionnaire has already been submitted prior to the "plaintiff's" absence from the jurisdiction of the federal circuit in which the action of the EEOC is pending, in the event any questionable event, criminal or civil, prevents the "plaintiff" from attending a meeting with the EEOC to file a timely charge of discrimination?

2. In "*Tolling of Statute of Limitations during absence from State as affected by fact that Party claiming benefit of Limitations remained Subject to Service during Absence or Nonresidence*", by Kenneth J. Rampino, J.D., 55 ALR 3d 1158, 1161 (1974), Rampino states: " A typical tolling provision or, as some courts refer to it, saving clause, with which the cases herein are concerned, states that if at the time the cause of action arises a party is outside the jurisdiction, or if after the cause of action occurs he departs from the state, the time of his absence shall not be computed

for purposes of the statute of limitations". More specifically, this annotation discusses a party "remaining amenable to service of process" during an absence. The petitioner wants to open the door to provide these same benefits to an aggrieved person filing a charge of discrimination with the EEOC.

3. The petitioner states that the 300-day clock begins running on April 18, 2000 when Dr. Denke, of Colorado State University (CSU), signed a letter denying him acceptance back into the Ph.D. program in Chemistry, after a university committee received compelling, new discriminatory information about the events alleged to have occurred at CSU. The petitioner was absent two times from Colorado between April 18, 2000 and the filing of the EEOC charge on February 6, 2001, *petition for writ* at A- 35.

a. The petitioner, [Persik], returned to WA State, via Greyhound, to obtain documented facts of the alleged disparate impact case of discrimination against CSU, on the eve of Labor Day 2000. The petitioner attempted to remain home in Washington State; however, the alleged employment discrimination continued at a scientific temporary labor company in Bellevue, WA. The petitioner went to the Seattle, WA office of the EEOC circa early November 2000 where an EEOC official briefly met with him; she stated words very close to: "the problems you are experiencing originated prior to your problems with [Mollie]". The petitioner took this to imply his alleged equal employment, and alleged equal protection problems were rooted in divorcing his former wife over a controversial abortion taking place on September 27, 1994 at the University of Washington (UW) Medical Center in Seattle, WA. The petitioner was able to earn the money to return to Colorado to complete the Intake Questionnaire prior to Thanksgiving 2000; however, this was already 3 weeks after his planned return.

b. The petitioner filed his EEOC Questionnaire on December 4, 2000 in this case. Ms. Hamming previously set up a meeting, to investigate allegations against Manpower Inc[1], for January 9, 2001, and the petitioner was told, by Ms. Hamming[2], that both questionnaires would be discussed in the scheduled meeting. The petitioner left for Pennsylvania circa December 19, 2000 where he was hospitalized after allegedly being hit by an automobile on December 22, 2000 near Mt. Holly Springs, PA. The meeting was postponed due to his involuntary hospitalization from December 22, 2000 until approximately January 5, 2001. Thus, this resulted in a 15 day unplanned extension of absence, from the State of Colorado, because the petitioner was not able to earn money to return to Colorado for the planned meeting on January 9, 2001 with the EEOC in Denver.

4. In *Absence as Tolling Statute of Limitations, supra*, at 1162, Rampino discusses "Fraud as tolling period for bringing action prescribed in statute creating the right of action. 15 ALR 2d 500. Regardless of the facts surrounding the accident, on December 22, 2000, whether it was a set-up, or an accident, it constitutes alleged fraud because officer Lee, PA state patrol, classified the case as a hit and run. Therefore, equal employment opportunity case law could be furthered if this Court is willing to grant this petition.

5. The court applied the "saving clause" in *Rich v Jefferson Medical College*, 125 F Supp 357 (1954, DC Pa), where the "court went on to say that the interpretation of the tolling provision could not be affected by the fact that the party was a domiciliary when he left the state , and thus could have been served at his usual place of abode, the court holding that the Pennsylvania saving clause operated to toll the

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[1] Petition for Writ filed on April 12, 2004 in case 03-1473.

[2] The petitioner believes it was Ms. Hamming.

statute while the defendant was serving in the military..., the court concluding that it had not been shown that the defendant was subject to ordinary Pennsylvania legal process". Persik located additional evidence, since filing the petition for writ, confirming the alleged conspiracy at 32. The alleged harassment and discrimination, at CSU, started in August 1997; the State Board of Agriculture deposited the petitioner's net pay into US Bank account number 1911992297 on August 15, 1997 with check number 255588. Officer Lee's report states that he picked up Persik at 5:55, and PA is the 2nd state. The US Army sent the petitioner to Ft McClellan, Alabama in 1988 (88) for chemical officer basic course.

Part II. Developing a standardized Federal Equal Employment Opportunity System where all US Circuits treat all people as equals in the USA

1. Persik requests this Court to still adopt the filing of the Intake Questionnaire as meeting the 300-day requirement as outlined in the original petition at 36-40. This is necessary in Persik v. Manpower Inc., 03-1473; however, it is no longer necessary in this case.

2. While drafting this petition, Persik checked the time from last date of alleged discrimination to the filing of the charge of discrimination, petition for writ at A-35-37. At A-31 in the petition for writ, Persik amended his charge to correct the last day of alleged discrimination to be April 18, 2000; therefore, the EEOC filed the charge on the 295th day following the last day of alleged discrimination. However, this was actually the 294th day following April 18, 2000. Furthermore, the EEOC filed the charge against CSU timely on the 300th day following the date listed in the December 4, 2000 Intake Questionnaire. In *Edelman v. Lynchburg College*, 228 F. 3d 503 (4th Cir. 2000), the court states: EEOC regulation, providing that EEOC charge may be

amended to cure technical defects or omissions, …, and that such amendments relate back to the date charge was first received". An amendment was filed on March 2, 2001 in the EEOC in Denver to a timely filed charge.

Part III. Is the EEOC's failure to turn the case over to the US Attorney's office a case of equitable estopple since the charge was filed 300 days following April 12, 2000 and 294 days following the amended date of last discrimination, April 18, 2000.

1. In *Persik v. Colorado State University et al.*, 60 Fed. Appx. 209, 209 (10th Cir. 2003), the court states: "Graduate teaching assistant waived appellate review of magistrate judge's report recommending dismissal of claims against university on ground that it was not proper party by failing to file a specific objection to report. Fed.Rules Civ. Proc. Rule 72(b), 28 U.S.C.A.". Persik disagrees.

2. At D087, Index for Appx to Dfdt – Appellee Adecco's Response Brief, the petitioner clearly states in his "Objections to the Recommendations…": The Plaintiff prays that this Court will except[3] the following objections: "the Attorney General should have been representing the Plaintiff". Persik, being pro se, considers this to be a clear objection to CSU not being the proper party to this suit.

3. The petitioner continues by citing, at ¶ 2 (g) of the "Objections…", (D 090, Appx to Dfdt –App Addeco, *supra*,): 31 ALR Fed 657, 663 § 1[c], § 2000 e-3, states: (f) Civil actions by Commission, Attorney General, … In the case in which a respondent is a government, government agency, … if the Commission has been unable to secure a conciliation agreement, … the Commission shall take no

[3] *Accept* is the correct spelling in the context of the sentence.

further action and shall refer the case to the Attorney General who may bring civil action against such respondent in the appropriate United States district court".

4. Again, Persik asks this court to review: *Violations by Agencies of Their Own Regulations*, 87 Harvard L. R. 629, 629 (1974) stating: "although the public is not free to violate federal administrative regulations, agencies in some circumstances have been permitted to depart from their own regulations, *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) (permitting violation). However, at 630, *Violations, supra*, the review states: "Agency violations of regulations which have been promulgated to benefit party, by entitling him to a substantive benefit or exemption ... have generally been invalidated by the courts. At 650, "Therefore, a court confronted with an unexplained violation should undertake the expense and delay of remanding the action so that the agency can supply reasons. *SEC v. Chenery Corp.*, 318 US 80 (1943) "provides precedent". At 651, *Violations*, "if the agency does not respond in a satisfactory manner, then the action should be reversed".

5. Persik maintains that this further research compliments his claim for equitable estoppel. "Whether party intentionally committed an act is irrelevant under doctrine of equitable estoppel", *Bechtel v. Robinson*, 886 F. 2d 644 (1990). The question can be posed, to the Denver office of the EEOC, on remand, "did someone consult with counsel for CSU, or the CO attorney general, between the February 6, 2001 filing of the EEOC charge and the EEOC's February 16, 2001 dismissal for untimely filing, petition for writ, A-33.

Furthermore, Persik states for clarity he is not alleging fraudulent intent on the part of CSU at this stage of the process, the dismissal of a timely filed charge, rather he cites: "Fraudulent intent is not necessary to estoppel; rather, estoppel is appropriate against a person who adopts position

which reasonably misleads someone into detrimental reliance regardless of intent of his actions, if to hold otherwise would have unjust effect. *In re Midway Airlines, Inc.* 180 B.R. 851.

6. Persik understands that "Law does not favor use of equitable estoppel against government", *Abel v. United States*, 995 F. Supp. 1036 (D. Neb. 1998); however, here Persik is pushing an issue that expands the very rights, through case law, of the people that the EEOC is to protect, and furthermore, the function of an educational institution, such as CSU, is to educate. Therefore, equitable estoppel "may be invoked against a government where: government makes misrepresentations; upon which defendant relies; to its detriment; and where misrepresentation constitutes affirmative misconduct", *Public Interest Research group of New Jersey v. Yates Industries, Inc. (AET)*, 757 F Supp 438 (1991), reconsideration granted in part 790 F Supp 511 (1991).

Part IV. "Demonstration that both this offense and the 'other crimes' show the 'modus operandi,' 'handiwork,' or 'signature' of the defendant", 29 Am Jur 2d § 423, as a means of furthering the petitioner's argument for equitable estoppel by accepting alleged statements by CSU legal clerk personnel and possibly Mr. Pendleton, CSU counsel.

1. Does the argument, pertaining to question 3 above, further the petitioner's claim for equitable estoppel pertaining to his admitted failure to serve both CSU, and the Colorado attorney general, based on his allegation that the CSU legal clerk, and possibly CSU's attorney Lawrence Pendleton, stated that CSU was not the correct body to receive service of process, by clearly "demonstrating that

both this offense and the 'other crimes' show the 'modus operandi,' 'handiwork,' or 'signature' of the defendant", 29 Am Jur 2d § 423 Evidence, To show identity or modus operandi?

2. The petitioner alleges that Ms Kristen Morrow [Morrow], of Nebraska, allegedly requested either Ms. Schreibman, Ms. Cutler or CSUPD's Officer John Higney, to allegedly falsify statements beginning in August 1997, for potential pecuniary benefit if Persik could be forced into the sales industry in Pennsylvania. Morrow's mother is an attorney, and Morrow previously discussed, with Persik, becoming an attorney. Thus, Morrow may know the legal ramifications of alleged misstatements, by a CSU legal secretary, not authorized to give advice. Persik would not know the implications in accepting advice. Thus, Morrow's "signature", is allegedly all over the act described in ¶1 above because it "bears a high degree of similarity to the charged offence", *United States v. Foutz*, 540 F 2d 733 (CA4 Md) occurring since the onset of the alleged harassment and discrimination in August 1997 at CSU. The pattern is simple; Persik maintains that he is allegedly continuously victimized in a mixed motive, disparate impact case of discrimination based on his gender and religious, pro life views (anti-abortion).

3. Persik views this issue as a very simple case of equitable estoppel.

Part V. Introduction of a 6th Protected Class under Title VII by new Case law

1. Persik requests this Court establish a 6th class of protected persons, *the Unborn child class*, always a minority in the USA, using the arguments presented in the petition for writ and this petition for case adjudication. Please remember the song from our childhood: "Jesus loves all the little children

of the World": the concept is simple, protect all of our people from conception until they pass from this Earth, and together WE must: (1) ensure they have a safest possible environment to grow up in, (2) receive the best possible education in the world, and (3) a workplace observing total equality for the individual.

2. "Ordinarily, the Supreme Court will not grant certiorari merely to review evidence or inferences drawn there from. However, special and important reasons for the grant of certiorari are present where the lower federal and state courts persistently deprive litigants of their right to a jury determination". *Rogers v. Missouri Pacific Railroad Co.*, 352 US 500 (1957). Persik will give this Court very special and important reasons, human life, human dignity and a complete package of equal employment opportunity in the US. Persik's Aunt and Uncle were from Peoria, IL. They had connections with Caterpillar in England. Persik's 1986, US Passport, clearly showed a P and a Visa stamp for Lima, Peru; he alleges his son's life was taken in 1994 for the former President Clinton's agenda (EEO for "gay" personnel).

3. "The 1994 confrontation between Pope John Paul II and the administration of U.S. President Bill Clinton over world population and family planning issues was inevitable, and could have been foreseen as early as the summer of 1992. Governor Clinton … ran on the most radical 'social issues' platform … committing themselves to federal funding of abortion on demand…", Witness to Hope, The Biography of Pope John Paul II, pg 715, George Weigel, Harper Collins Publishers, New York, NY 2001.

4. Persik maintains former WA Governor Lowry, supported the Clinton administration's 1992 goals on both abortion and gay rights. In 1992, Persik's WA AR NG unit traveled to Albany County, Wyoming. The Clinton's now reside in NY.

In the book, Whose Life? A Balanced Comprehnsive View of Abortion from its Historical Context to the Current Debate, by Catherine Witney, pg 128, Witney states: "Now, almost twent years later, Michelman radiated empathy for women like herself as she stared into the hot lights of the camera. And there was a hard edge to her voice as she echoed the imagery of the most famous abortion rights foe George Bush: 'To politicians who oppose choice, we say 'Read our lips. Take our rights. Lose your jobs'""

5. We need this class of protected "Persons". Persik continues to be allegedly discriminated against by other employers to this day. Persik now has a wonderful Christian woman, from Switzerland, in his heart. She will remain there for his life should she choose to.

CONCLUSION

The Petitioner prays this Court will Grant this petition for the reasons outlined, the petition for writ, and the statements in *Persik v. Colorado*, 02-875 (2002). Furthermore, the petitioner prays that this Court will exercise it's authority and revisit *Persik, supra*, as stated in 2A Fed. Proc § 3:410, " If Certiorari is denied earlier in a litigation and a subsequesnt petition for certiorari is later granted, ..., may consider questions raised by both petitions", *Chessman v. Teets*, 354 US 156 (1957), *Mercer v. Theriot*, 377 US 152 (1964)..

Respectfully submitted this 14th day of May 2004.

Raymond Charles Persik

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CERTIFICATE PURSUANT TO SUPREME COURT
RULE 44.2

CERTIFICATE

I certify pursuant to Supreme Court Rule 44.2 that this petition for rehearing is restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and that it is presented in good faith and not for delay.

Raymond Charles Boral

This document has been subscribed and affirmed, or sworn to before me in the county of Jefferson, state of Colorado this 14th day of May 2004.

DIANNA B. LYTLE
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires Apr. 14, 200

Dianna B Lytle

DIANNA B. LYTLE
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires Apr. 14, 2007